

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/507,398
Applicant: Gustav Dengel
Filing Date: August 24, 2005
Title: **CONTAINER WITH A COVER**
Customer No.: 32047
Confirmation No.: 3153
TC/A.U.: 3781
Examiner: Ned Andrew Walker
Docket: LIP047

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO ELECTION/RESTRICTION REQUIREMENT

Sir:

This paper is being filed in response to an Election/Restriction Requirement mailed March 17, 2009. This response is being filed within the one-month shortened statutory period for reply. Accordingly, Applicants believe that no extension of time is required. However, Applicants conditionally petition for an extension of time to provide for the possibility that the need for such a petition has been inadvertently overlooked. Please charge our Deposit Account No. 50-2121 for any required fee.

By this Official Action claims 1-15 are pending and stand subject to a restriction/election requirement under 35 U.S.C. § 121. The Examiner has identified six species of generic inventions as follows:

Species 1: Figures 1-3 (tongue-like element)

Species 2: Figure 4 (axial interruptions)

Species 3: Figure 5 (wing or louver-like parts)

Species 4: Figure 6 (first tongue-like element arrangement)

Species 5: Figure 7 (second tongue-like element arrangement)

Species 6: Figures 8-9 (third tongue-like element arrangement)

It is submitted that Figures 1-9 show embodiments of a container with a cover, according to claim 1 and that claim 1 is generic to all embodiments. Applicant notes the following detailed analysis in support of what is considered to be the generic nature of claim 1.

The application is directed at container closed by a cover wherein a tongue-like element **8** of the container may be pivoted upwards to raise the cover by guiding part **13** of the tongue-like element **8** past a protruding tongue **12**. See **FIG. 1-3**. The part **13** of the tongue-like element **8** may not be guided back past protruding tongue **12** to its starting position due to an interference of tongue **12** against the backside of part **13** (see Figure 3). This provides a visual and positive physical indication that the container is not in its original condition.

Accordingly, it is hopefully clear that claim 1 captures the above feature of the present invention.

Figure 4 (which was identified as species 2) illustrates axial interruptions **24** at the container edge at the lateral ends of the tongue-like element **8** and in the area of edge projection **11** which continue into opening **7**. These interruptions permit independent movement of the element **8** relative to the edge protection and lateral edges. In addition, additional parts **13** of the tongue-like elements extend downward from the lateral edges of the tongue-like element **8** and upwards from strip **22** to engage the lateral edges of the

container edge **6** and container wall **5** and act like part **13** in Figures 1-3 to physically interfere with repositioning the tongue-like element **8** back into opening **7**.

Accordingly, the basic principle of providing a part of a tongue-like element that is guided past a wall and is physically interfered from returning to its original position is the same for Figures 1-3 as for Figure 4. Accordingly, claim 1 is generic to and applies to FIG. 4 as it contains a part 13 of the tongue-like element 8 that can be guided outwards in front of the container edge by pivoting movement and cannot be guided back behind the container edge when the tongue like element 8 is pivoted back towards the starting position.

Figure 5 (identified as species 3) illustrates parts **13** (wings) that extend *laterally* from the bottom of tongue-like element **8** to interfere with the lateral edges of wall **6** and provide additional features that accomplish the same function as parts **13** in Figures 1-3.. Reinforcing ribs **21** stiffen the tongue-like element. Domes **26** further reinforce the side of the container. As with Figure 4, additional interfering (lateral) parts **13** have been added to tongue-like element **8** to ensure that tongue-like element **8** cannot be returned to its original latched position. Accordingly, claim 1 is generic to and applies to FIG. 5 as it contains as it contains a part 13 of the tongue-like element 8 that can be guided outwards in front of the container edge by pivoting movement and cannot be guided back behind the container edge when the tongue like element 8 is pivoted back towards the starting position.

Figure 6 (identified as species 4) illustrates several operating holes **27** for grasping the lower edge of tongue-like element **8**. As in Figure 5, reinforcing ribs **21** and domes **26** are integrally molded on the tongue-like element and container wall, respectively, to provide stiffness. Breakable links **28** guard against unintentional operation. While the outer shape of the tongue-like element differs slightly from Figure 1 to Figure 6, as recited at page 15 lines 1-7, “[f]igures 6 and 7 show two further embodiments of tongue-like element **8**, where the functional principle of the tongue-like element essentially corresponds to that in Fig. 1, although the end of tongue-like element

8 itself facing container edge **2** is drawn farther into container edge **2**, meaning that a generally larger edge projection **11** is obtained.” Clearly, the differences are in shape and not in function. Both Figures 1 and 6 have a single tongue-like element. Accordingly, claim 1 is generic to and applies to FIG. 5 as it contains a part 13 of the tongue-like element **8** that can be guided outwards in front of the container edge by pivoting movement and cannot be guided back behind the container edge when the tongue like element **8** is pivoted back towards the starting position.

Figure 7 (species 5) illustrates a tongue-like element **8** which includes a large opening **27** yet still includes the basic functional elements of a tongue **12** that overlaps part **13** of tongue-like element **8** wherein after pivoting away the part **13** cannot be slipped back past tongue **12** to its original position. There is no second tongue-like element as the Office Action suggests. Accordingly, claim 1 is generic to and applies to FIG. 7 as it contains a part 13 of the tongue-like element **8** that can be guided outwards in front of the container edge by pivoting movement and cannot be guided back behind the container edge when the tongue like element **8** is pivoted back towards the starting position.

Figures 8 and 9 (species 6) illustrate a slightly different shape of tongue-like element **8** with openings **27** and domes **26** (like Figure 6), including additional parts **13** extending downward at the edges of the tongue-like element **8** (like Figure 4). Figure 8 illustrates the container unopened and Figure 9 illustrates the container after opening. Breakable links **29** (similar to breakable links **28** in Figure 6) provide additional evidence that the container has been opened (lateral edge parts **13** now lie outside of walls **6** and tongue **12** resides behind part **13** of tongue-like element **8**). Accordingly, claim 1 is generic to and applies to FIGS. 8 and 9 as they contain a part 13 of the tongue-like element **8** that can be guided outwards in front of the container edge by pivoting movement and cannot be guided back behind the container edge when the tongue like element **8** is pivoted back towards the starting position.

In summary, except for some relatively minor structural differences (shape of tongue-like element, addition of holes, reinforcing ribs and domes) the basic functionality of the container is the same for Figures 1-9 in that a container closed by a cover includes at least one tongue-like element that is connected to the container wall such that a portion of tongue-like element engages the container edge from behind and can be pivoted outwards in front of the container edge and cannot be guided back behind the container edge when pivoted back (see again claim 1).

Accordingly, Applicants request reconsideration of the restriction and withdrawal of the requirement on the basis of the above remarks.

Applicants also provisionally elect Species 2 for prosecution as required by MPEP § 818.03. It is submitted that claims 1-5, 7, 10, 12, 14 and 15 are believed readable thereon. In addition, again, claim 1 is believed to be generic and upon allowance of a generic claim applicants reserve the right to reintroduce any withdrawn claims due to the provisional species election herein.

In the event that the Examiner deems personal contact in this matter, the Examiner is invited to call the undersigned attorney at 603-668-6560.

In the event that there are any fee deficiencies or any additional fees are payable, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,

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